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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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04/06/2006

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EXAMINER

ROBERTS, LEZAH

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|------------------------------------|--|
| Office Action Summary | Application No. 10/723,764 | Applicant(s) LAWRENCE, GRADY F. | |
| | Examiner Lezah W. Roberts | Art Unit 1614 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The office action is made **FINAL**. New rejections stated are necessitated by amendment.

Response to Amendment

This Office Action is in response to the amendment filed January 18, 2006.

Claim Rejections - 35 USC § 112

Claim 4 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The instant claims are indefinite insofar as the basis for the percent calculation is not set forth, e.g., percent by weight based on the total weight of the composition, percent by volume based on the volume of the carrier, etc.

The Applicant's has amended the claims by incorporated by weight.

The rejection is withdrawn.

Claim Rejections - 35 USC § 102 - Anticipation

1) Claims 1-3 were rejected under 35 U.S.C. 102(b) as being anticipated by Gentile (US 5,392,947). Gentile teaches two part mouthwash compositions comprising a final solution, which is a mixture of a first solution containing: water, hydrogen

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peroxide, phosphoric acid and a dye, and a second solution comprising: sodium bicarbonate, sodium lauryl sulphate and a flavor.

Applicant argues by amending the claims by incorporating non-effervescence and deleting sodium bicarbonate that the prior art no longer applies to the claims. The applicant's arguments are persuasive and the rejection is withdrawn.

Applicant's arguments with respect to claims 1-3 have been considered but are moot in view of the new ground(s) of rejection.

The following rejection is necessitated by amendment.

1) Claims 1, 3-4 and 6-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Rochon (US 6,346,279).

Rochon teaches multipurpose hydrogen peroxide disinfectants with increased activity. The compositions are aqueous solutions comprising hydrogen peroxide, a phosphorous containing acid and at least one anionic surfactant. The hydrogen peroxide is preferably makes up to 8% of the solutions (col. 2, lines 35-37). The phosphorous containing acid includes phosphoric acid and makes up 0.1% to 5.0% of the solution (col. 1, lines 62-64). The anionic surfactants include sodium lauryl sulphate, which is the preferred surfactant when using an alkali metal C8 to C18 alkyl sulphate. The surfactant comprises 0.02% to 5% of the solution (col. 4, lines 5-23). These components encompass claim 1. Colorants may also be incorporated into the solutions (col. 5, lines 15-17), as recited in claim 3. When considering the water concentrations, the water content would range from about 82% to about 99% based on the above

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values. This encompasses claim 4. The intended use of the aqueous peroxide solution carries no weight in determining the patentability of the instant claims because the aqueous solution of the prior art can be used for disinfecting dentures and toothbrushes as well as being used as a mouthwash, as recited by the instant claims, as well as a sporicide, fungicide, virucide, bactericide, broad spectrum sanitizer, general purpose cleaner and bleach alternatives, particularly in institutional, healthcare and food applications as disclosed by the reference, since it is substantially the same as the Applicant's solutions. The reference anticipates the instant claims insofar as it teaches a solution comprising water, hydrogen peroxide, phosphoric acid and sodium lauryl sulfate.

2) Claims 1-3 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Sharma (US 5,683,679).

Sharma teaches oral compositions comprising peroxide with stable green color. The oral compositions may be in the form of dentifrice (e.g. paste or gel) or mouthwash (col. 2, line 58), as recited in claim 7. The compositions comprise peroxide, preferably hydrogen peroxide, which makes up from 0.01 to 10% by weight of the compositions (col. 2, lines 9-12). The preferred dyes used in the compositions were FD&C Blue 1 and FD&C Yellow 5 (col. 2, lines 53-55), as recited in claim 3. Water may be present in the compositions in amounts ranging from about 20 to about 99% by weight (col. 2, lines 66-67). The surfactant used in the compositions may be of the anionic, nonionic, cationic or amphoteric type; the most preferred being sodium lauryl sulphate.

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Surfactants are usually present in amounts from 0.5 to 10% (col. 3, lines 47-53).

Phosphoric acid was used in an amount of about 0.04% in the examples of the compositions. The compositions also include flavors (see examples) as recited in claim 2. In regards to using the compositions as a denture or toothbrush cleaner as specified in claims 1 and 6, the intended use of the aqueous peroxide solution carries no weight in determining the patentability of the instant claims because the aqueous solution of the prior art can be used for cleaning dentures or toothbrushes, as recited by the instant claims, a mouthwash as disclosed by the reference, since it is substantially the same as the Applicant's solutions. The reference anticipates the instant claims insofar as it teaches a solution comprising water, hydrogen peroxide, phosphoric acid and sodium lauryl sulfate.

Claim Rejections - 35 USC § 103 - Obviousness

Claim 4 was rejected under 35 U.S.C. 103(a) as being unpatentable over Gentile in view of In re Aller 105 USPQ 233, 235 (CCPA 1955).

The prior art is as stated above in the response to the anticipation rejection with the addition of case law to support changing component percentages in a composition. In re Aller 105 USPQ 233, 235 (CCPA 1955) shows normally, changes in result effective variables are not patentable where the difference involved is one of degree, not of kind; experimentation to find workable conditions generally involves the application of no more than routine skill in the art.

The Applicant's response was to amend the claims by adding noneverescent, which is supported in the specification where it reads "the solution functions effectively without effervescence". The applicant also deletes baking soda, which is supported in the provision application. This being said, the applicant's arguments are persuasive and the rejection is withdrawn.

Applicant's arguments with respect to claim 4 have been considered but are moot in view of the new ground(s) of rejection.

The following rejection is necessitated by amendment.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sharma (US 5,683,679) in view of In re Aller 105 USPQ 233, 235 (CCPA 1955).

The prior art is as stated above in the anticipation section. The reference differs from the instant claims insofar as to not disclose the percentage of 0.15% for sodium lauryl sulfate. Normally, changes in result effective variables are not patentable where the difference involved is one of degree, not of kind; experimentation to find workable conditions generally involves the application of no more than routine skill in the art. In re Aller 105 USPQ 233, 235 (CCPA 1955).

It would have been obvious to one of ordinary skill in the art to have varied the relative percentages of the components in Rochon to determine workable percentages for use in the final product obtained therein with the desired effects.

Obvious-Type Double Patenting

Claims 1-4 and 6-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-34 of copending Application No. 10/610669. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are coextensive in that they both claim a solution comprising hydrogen peroxide, sodium lauryl sulfate, water, phosphoric acid and a color or flavor in substantially the same amounts. The compositions are also used as a denture cleanser, a mouthwash and a toothbrush cleanser.

It would have been obvious to one of ordinary skill in the art to have called the compositions of the instant claims antimicrobial solutions because they have substantially the same components in substantially the same amounts as the copending application's claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-4 and 6-7 are rejected.

No claims allowed.

This action is made **FINAL**.

Conclusion

Applicant's amendment, the deletion of baking soda and addition of mouthwash and toothbrush cleaner in the claims, necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

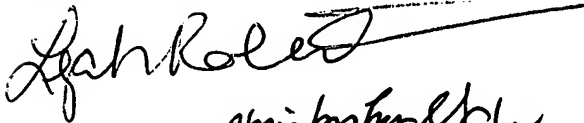
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lezah Roberts
Patent examiner
Art Unit 1614




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